

KENYA 2022 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Kenya is a republic with three branches of government: an executive branch, led by a directly elected president; a bicameral parliament consisting of the Senate and National Assembly; and a judiciary. In the August general elections, the third under the 2010 constitution, citizens cast ballots for president, deputy president, and parliamentarians, as well as county governors and legislators. International and domestic observers judged the elections generally free and fair, although the opposition alleged there were irregularities. The Independent Electoral and Boundaries Commission declared United Democratic Alliance party candidate Deputy President William Ruto defeated former Prime Minister Raila Odinga.

The National Police Service maintains internal security and reports to the Ministry of Interior and Coordination of National Government. The National Intelligence Service collects intelligence both internally and externally and reports directly to the president. The Kenya Defence Forces report to the Ministry of Defence and have some domestic security responsibilities, including border security and supporting civilian organizations in the maintenance of order, including post-disaster response. Civilian authorities at times did not maintain effective control over the security forces. There were reports that members of the security forces committed numerous abuses.

Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings; forced disappearances; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with privacy; restrictions on free expression and media, including violence or threats of violence against journalists and censorship; substantial interference with the freedom of peaceful assembly and freedom of association, including harassment of nongovernmental organizations and activists; serious government corruption; lack of investigation of and accountability for gender-based violence; and the existence of laws criminalizing consensual same-sex sexual conduct between adults, although there were no reports of the law being

enforced.

Impunity at all levels of government continued to be a serious problem. The governmental Independent Policing Oversight Authority, established to provide civilian oversight of police, investigated numerous cases of misconduct. The government took limited and uneven steps to address cases of alleged unlawful killings by security force members, although the Independent Policing Oversight Authority continued to refer cases of police misconduct to the Office of the Director of Public Prosecutions for prosecution. Despite many reports and investigations of alleged corruption, few cases resulted in prosecutions, leading to charges of impunity.

Al-Shabaab staged deadly attacks on isolated communities along the border with Somalia, targeting both security forces and civilians. The government continued to prioritize investigations and prosecutions of terrorist activities. Human rights groups alleged security forces committed abuses, including extrajudicial killings, while conducting counterterrorism operations.

Section 1. Respect for the Integrity of the Person

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were numerous reports that the government or its agents committed arbitrary and unlawful killings, particularly of known or suspected criminals, including terrorists. Between July 2021 and June 30, the Independent Policing Oversight Authority (IPOA) received 180 complaints regarding deaths resulting from police actions or inactions, compared with 188 in the prior year (see section 5). The Missing Voices website, founded by a group of nongovernmental organizations (NGOs) to track police killings and disappearances, documented 90 cases of police killings and three suspected enforced disappearances during the year. The Independent Medico-Legal Unit (IMLU) documented 37 cases of extrajudicial killings between January and June.

In July, police officers in Nakuru County killed Collins Kibet, Collins Kipkorir, Kevin Kipyegon, and Dennis Kipchirchir, who police alleged were members of a

criminal gang. Witnesses saw police pick up the four young men from their homes along with other suspects who were later released. According to IMLU, postmortem examinations showed the victims were shot at close range from behind or the side and had gunshot wounds in the head, chest, and abdomen. There was evidence the bodies had been dragged on the ground to a secondary location but no evidence of defensive wounds. IMLU called for an investigation by IPOA and the Internal Affairs Unit (IAU), the suspension of the involved officers, and witness protection for acquaintances of the deceased.

Some groups alleged authorities significantly underestimated the number of extrajudicial killings by security forces, including due to underreporting of such killings in informal settlements, particularly in dense urban areas. Media reports and NGOs attributed many human rights abuses to counterterrorism operations in Nairobi and the northeast counties of Mandera, Garissa, and Wajir bordering Somalia, as well as along the coast. Human rights groups reported these abuses targeted Muslims, especially ethnic Somalis. Many of the victims were from the coastal region, Nairobi, and Kisumu. The NGO Humanity, Accountability, Knowledge, Integrity (HAKI) in Africa reported extremists and criminal groups killed eight individuals in the coastal counties of Mombasa, Kwale, and Kilifi.

Al-Shabaab terrorists continued to conduct deadly attacks in areas close to the border with Somalia, targeting both security forces and civilians. The Centre for Human Rights and Policy Studies documented 51 terrorist attacks in 2021 which led to 100 deaths and 73 injuries. Most attacks in the northern part of the country targeted security officials in transit, communication installations, and government contractors working on the Kenya-Somalia border wall. In January, police reported an improvised explosive device killed at least 13 passengers and injured others in a bus traveling in the northeast part of the country near the border with Somalia. In August, al-Shabaab militants attacked and wounded five security agents on patrol in Mandera County.

b. Disappearance

Observers and NGOs alleged members of the security forces and extremist groups were culpable of forced disappearances. Human rights groups noted many unlawful killings first materialized as enforced disappearances. IMLU

documented seven enforced disappearances between January and June.

During the second half of 2021 and through the year, more than 30 mutilated bodies turned up in River Yala in the western part of the country. According to some reports, up to 70 bodies were found, and some of the bodies were reportedly handcuffed. Human rights groups called on the government to establish a parliamentary inquiry into the cases. The Directorate of Criminal Investigations (DCI) opened an investigation in January but had not given an update as of year's end. IPOA was investigating the killings and noted the nature of injuries sustained or cause of death point to the same or similar perpetrators. Authorities identified some of the bodies as belonging to persons who had previously gone missing. According to the Kenya National Commission on Human Rights (KNCHR), 14 of the victims remained unidentified.

Media and human rights groups also reported on families on the coast and in northeastern counties searching for relatives who disappeared following arrest and of authorities holding individuals incommunicado for interrogation for several weeks or longer (see section 1.d.). In March, six men abducted Amani Mohamed Mwafujo immediately following his release from prison after a Kwale court acquitted him of terror-related charges. Mwafujo's family had not heard from him since.

Al-Shabaab and other extremist groups reportedly continued to abduct civilians in areas bordering Somalia. In October, three local teachers were reported missing following an attack on a primary school in Mandera County by suspected al-Shabaab militants, but a Mandera County commissioner later reported officials accounted for the missing teachers.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and Other Related Abuses

The law includes provisions to apply articles of the constitution, including freedom from torture and cruel, inhuman, or degrading treatment or punishment; respect and protection of human dignity; and freedom and security of the person. Additionally, the law provides protections to vulnerable witnesses and officials who refuse to obey illegal orders that would lead to torture. The law also provides

a basis to prosecute torture, but it was rarely used. The KNCHR is mandated to implement provisions of the Prevention of Torture Act.

NGOs continued to receive reports of torture and other inhuman or degrading treatment by government forces. IMLU reported 109 cases of torture between January and September, as compared with 78 cases during the same period in 2021.

Police and prison officials reportedly used torture and violence during interrogations as well as to punish pretrial detainees and convicted prisoners. According to human rights NGOs, physical battery, bondage in painful positions, and electric shock were the most common methods used by police. A range of human rights organizations and media reported police committed indiscriminate violence with impunity against poor persons and ethnic minorities. In October, President Ruto ordered the disbandment of the Special Services Unit (a unit within the DCI), suspected by many of having committed human rights abuses, including targeted extrajudicial killings.

Police used excessive force in some cases when making arrests. For example, there were press and NGO reports of police brutality against protesters and unarmed citizens (see sections 2 and 5), particularly related to antigovernment protests. In June, officers from the paramilitary General Service Unit killed four persons and injured seven others in Kajiado County who were protesting the increase in wild animal attacks after an elephant killed a local teacher.

IMLU reported police violence was especially prevalent in informal settlements. The Mathare Social Justice Centre alleged the National Police Service used violent policing tactics on residents of impoverished neighborhoods such as the Mathare slum in Nairobi. The most prevalent form of violence was arrests and beatings targeting young men often profiled as criminals. Human rights groups also documented incidents involving use of live ammunition, tear gas, sexual violence, and property damage.

The Police Reforms Working Group-Kenya accused police of regularly engaging in criminal activities. In March, a video circulated online showing officers from Pangani Police Station shooting Galgalo Bariso and Sharim Kimoa while they lay

on the ground. In April, the Missing Voices Coalition released its annual report on extrajudicial killings and enforced disappearances in the country. The report documented 30 police killings linked to the Pangani Police Station in Nairobi in 2021.

Impunity remained a serious problem across law enforcement agencies as the government rarely investigated or prosecuted police abuses. Nairobi police officer Ahmed Rashid remained on duty despite a video recording of him shooting and killing two unarmed civilians Jamal Mohamed and Mohamed Dahir Kheri in 2017. In November, the Directorate of Public Prosecution charged Rashid with murder. Between July 2021 and June, IPOA investigated 178 deaths caused by police. Five of these investigations led to murder convictions and one led to conviction of other crimes.

In July, the High Court convicted three police officers of the 2016 killing of International Justice Mission attorney Willie Kimani, a human rights defender, his client Josephat Mwenda, and their driver Joseph Muiruri. Kimani was representing Mwenda in a police brutality case in which Mwenda had accused a police officer of shooting him in the hand and arresting him under false pretenses. Civil society believe police targeted Mwenda for ongoing police harassment after he filed a complaint against the officer and one of his colleagues with IPOA.

Human rights groups also noted the government failed to provide compensation and redress to families of victims. Court cases took a long time to conclude; the Kimani case took six years. Once the case was successfully concluded, the government also sometimes delayed payment of compensation, deferring to parliament to approve the payment. In October, human rights activists called on the Office of the Director of Public Prosecution (ODPP) and the judiciary to conclude cases of police brutality and extrajudicial killings within three years.

Victims of police abuse may file complaints at regional police stations, police headquarters through the IAU and its hotline, and through the IPOA website and hotline (see section 5). IPOA investigated allegations of excessive force that led to serious injuries, but few led to prosecutions. Police officials at times resisted investigations and detained some human rights activists who publicly registered complaints against government abuses. Human rights NGOs reported police used

disciplinary transfers of officers to hide their identities and frustrate investigations into their alleged crimes. Many media and civil society investigations into police abuse ended after authorities transferred officers, and police failed to provide any information concerning their identities or whereabouts.

The National Police Service continued efforts launched in 2020 to digitize records held at police stations on incidents and complaints. Government officials stated the program aimed to increase accountability and reduce opportunities for police to alter or delete records.

Prison and Detention Center Conditions

Human rights organizations reported prison, detention center, and police station conditions were harsh and life threatening due to overcrowding, food and water shortages, and inadequate sanitary conditions and medical care.

Abusive Physical Conditions: As of March, the NGO World Prison Brief estimated the country's total prison population at almost 53,000 including pretrial detainees, in a system with a capacity of 30,000. Although several new prisons were constructed since 2012, the average prisoner population remained nearly 200 percent of capacity, including a large population of pretrial detainees; some prisons held up to 400 percent of capacity. Authorities also continued a prison decongestion program that entailed releasing petty offenders and encouraging the judiciary to increase use of a community service program in its sentencing.

During the year the judiciary continued to address overcrowding by adopting alternatives to pretrial detention and promoting sentence reduction, including through the expanded use of plea bargaining.

Authorities generally separated children from adults except during the initial detention period at police stations, when authorities often held male and female adults and juveniles in a single cell. Several counties lacked adequate facilities to hold juveniles and women apart from men in courts and police stations. According to IPOA, 73 percent of police facilities had separate cells for women, 18 percent had separate cells for female juveniles, and 41 percent had separate cells for male juveniles. IPOA reported some police facilities used offices and corridors as holding places for juveniles and that some facilities had converted cells into

storage and office space due to space constraints. Pretrial detainees were held together with convicted prisoners. According to the prison commissioner, the Prisons Service included four correction facilities for juveniles. Prison officials reported that, because there were few correction facilities for juveniles, authorities often had to transport them long distances to serve their sentences, spending nights at police stations under varying conditions along the way.

The law allows children to stay with their mothers in certain circumstances until age four or until arrangements for their care outside the facilities are concluded, whichever is earlier.

Prisoners generally received three hot meals a day, but portions were inadequate. Access to drinking water remained a problem at some facilities. Prisoners generally spent most of their time indoors in inadequately lit and poorly ventilated cellblocks.

The prison commissioner reported the prison system continued to face serious health and welfare problems due to communicable diseases such as tuberculosis. There were no reports of deaths due to physical conditions in prisons. Inmates sometimes performed unpaid labor, including cooking, laundry, and cleaning.

Administration: The KNCHR reported improved access to prisons and detention facilities to monitor human rights standards. The National Council on the Administration of Justice (NCAJ) serves as ombudsperson over government administration of prisons. It receives confidential correspondence from inmates and recommends remedies to address their concerns, including those pertaining to prison living conditions and administration. Many government-designated human rights officers lacked necessary training, and some prisons did not have a human rights officer.

Prison officials sometimes denied prisoners and detainees the right to contact relatives or lawyers. Family members who wanted to visit prisoners sometimes reported bureaucratic obstacles that generally required a bribe to resolve. NGOs reported prisoners had reasonable access to legal counsel and other official visitors, although there was insufficient space in many prisons and jails to meet with visitors in private and conduct confidential conversations.

Independent Monitoring: The government permitted prison visits by independent nongovernmental observers and foreign diplomats.

d. Arbitrary Arrest or Detention

The law prohibits arrest or detention without a court order unless there are reasonable grounds for believing a suspect has committed or is about to commit a criminal offense. Police, however, arrested and detained persons arbitrarily, accused them of a crime to mask underlying police abuses, or accused them of more severe crimes than they had committed. For example, legal rights NGOs and prison officials reported overuse of the charge of “robbery with violence” that may carry a life sentence, even when violence or threats of violence were insignificant. Some petty offenders consequently received disproportionately heavy sentences. The law entitles persons arrested or detained to challenge in court the legal basis or arbitrary nature of their detention, but that right was not always protected.

Police frequently failed to enter detainees into custody records, making it difficult to locate them. Dispute resolution at police stations resolved a significant number of crimes, but authorities did not report or record them, according to human rights organizations.

Arrest Procedures and Treatment of Detainees

The law provides police with broad powers of arrest. Police officers may make arrests without a warrant if they suspect a crime occurred, is happening, or is imminent. Victims’ rights NGOs reported that in some cases authorities required victims to pay bribes and to provide transportation for police to a suspect’s location to execute a legal arrest warrant.

The constitution’s bill of rights provides significant legal protections, including provisions requiring arrested persons to be arraigned, charged, informed of the reason for continuing their detention, or released within 24 hours of their arrest as well as provisions requiring the issuance of a writ of habeas corpus to allow a court to determine the lawfulness of detention. In many cases, however, authorities did not follow the prescribed time limits. While authorities in many cases released detainees held longer than the prescribed period, some cases did not result in an acquittal, and authorities provided no compensation for time served in pretrial

detention.

The constitution establishes the right of suspects to bail unless there are compelling reasons against release. There is a functioning bail system, and all suspects, including those accused of capital offenses, are eligible for bail. Many suspects remained in jail for months pending trial because of their inability to post bail. Due to overcrowding in prisons, courts rarely denied bail to individuals who could pay it, even when the circumstances warranted denial. For example, NGOs that worked with survivors of sexual assault complained authorities granted bail to suspects even in cases in which there was evidence they posed a continuing threat to survivors.

Although the law provides pretrial detainees with the right to access family members and attorneys, family members of detainees frequently complained authorities permitted access only upon payment of bribes. When detainees could afford counsel, police generally permitted access to attorneys.

Arbitrary Arrest: Police arbitrarily arrested and detained persons. Victims of arbitrary arrest were generally poor young men, particularly those living in informal settlements. Human rights organizations complained security forces made widespread arbitrary arrests and detentions during counterterrorism operations. These arrests reportedly targeted Muslim citizens, including ethnic Somalis.

NGOs reported arbitrary arrests and detention of activists, journalists, and bloggers during the year. The Defenders Coalition stated it had provided support, including legal representation and bail, to 11 activists who had been arrested or detained between January and September. Most activists were released within short periods, usually less than 24 hours, and in most cases prosecutors either declined to press charges or courts dismissed the cases.

Pretrial Detention: Lengthy pretrial detention was a serious problem and contributed significantly to prison overcrowding. During the year, more than 40 percent of inmates were pretrial detainees. Authorities held some defendants in pretrial detention longer than the statutory maximum term of imprisonment for the crime for which they were charged. The government claimed the average time

spent in pretrial detention was 14 days, but there were reports many detainees spent two to three years in prison before their trials were completed. Police from the arresting locale were responsible for bringing detainees from prison to court when hearings are scheduled but often failed to do so, forcing detainees to wait for the next hearing of their case (see section 1.e.).

During the year, normal court operations resumed fully following disruptions during the COVID-19 pandemic, although the judiciary continued to encourage virtual access to proceedings. Courts continued to allow virtual attendance in some instances. Virtual links to court sessions were available on official websites.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, although the government did not always respect judicial impartiality. The government sometimes undermined the independence of the judiciary and at times did not respect court orders, but the outcomes of trials did not appear to be predetermined.

The Judicial Service Commission, a constitutionally mandated oversight body intended to insulate the judiciary from political pressure, provides the president with a list of nominees for judicial appointment. The president selects one of the nominees for parliamentary approval. The president appoints the chief justice and appellate and High Court judges through this process. The commission publicly reviews judicial appointees. In May 2021, then President Kenyatta appointed 34 judges but declined to appoint six of the commission's nominees. President Ruto appointed the remaining six nominees in September immediately following his inauguration.

Trial Procedures

The law provides for the right to a fair and public trial, although vulnerable individuals may give some testimony in closed session; the independent judiciary generally enforced this right. The law also provides defendants the right to receive prompt and detailed information on the charges against them, although authorities did not always promptly inform persons of the charges against them.

The NCAJ and the ODPP continued efforts to train magistrates, investigators,

prosecutors, child-service officers, probation officers, and other stakeholders on effective and efficient case resolution and management techniques to reduce case backlog and ease prison congestion.

There was no government-sponsored public defenders service with sufficient funding to meet the demand, and courts continued to try most defendants without representation because they could not afford legal counsel. Many defendants self-represented as they cannot afford legal services or rely on volunteer paralegal services in the prisons.

Normal judicial operations resumed during the year following two years of virtual court sessions during the COVID-19 pandemic.

The National Legal Aid Service facilitates access to justice, with the goal of providing pro bono services for indigent defendants who cannot afford legal representation. Other pro bono legal aid was available only in major cities where some human rights organizations, notably the Federation of Women Lawyers-Kenya (FIDA) provided services. The Prisons Service collaborated with various paralegal organizations such as Kituo Cha Sheria and Legal Resources Foundation Trust to establish justice centers within prisons to facilitate delivery of legal aid. Pretrial detainees also received instructions on how to self-represent in court. Government-established special committees, which included paralegals and prison officials, also served to increase prisoners' access to the judicial system. NGOs noted no single system provided "primary justice" to prisoners and detainees, who instead relied on a patchwork of services largely provided by NGOs.

Discovery laws were not clearly defined, handicapping defense lawyers. Implementation of a High Court ruling requiring provision of written statements to the defense before trial remained inconsistent. Defense lawyers often did not have access to government-held evidence before a trial. There were reports the government sometimes invoked the Official Secrets Act as a basis for withholding evidence.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals may use the civil court system to seek damages for abuses of human rights and may appeal decisions to the Supreme Court as well as to the African Court of Justice and Human Rights.

According to human rights NGOs, bribes, extortion, and political considerations influenced the outcomes in some civil cases. Court fees for filing and hearing civil cases effectively barred many persons from access to the courts. NGOs reported the government was slow to comply with court orders requiring compensation for victims of torture and other police abuses in some cases.

Property Seizure and Restitution

There is no established system for restitution or compensation for those declared to be squatters and ordered to vacate land. Both private and communal clashes were common because of land disputes. The government used forced eviction and demolition to regain what it claimed was illegally occupied public land.

In July, the Environment and Land Court ruled Kenya Railways Corporation (KRC), the principal secretary of Housing and Urban Development, and the attorney general had infringed on the right of the Muhoroni to own property when they forcefully evicted 206 members of the Muhoroni community in Kisumu in 2021. The court ordered KRC to pay 206 victims 100,000 Kenyan shillings (\$854) each in compensation and to engage residents in developing a relocation plan.

In 2017, the African Union Court on Human and Peoples' Rights ruled in favor of the Indigenous Ogiek community evicted in 2009 from the Mau Forest. The court ruled government actions had violated seven articles of the African Charter on Human and Peoples' Rights, to which the country is a signatory. In June, the African Union Court on Human and Peoples' Rights awarded \$1.3 million in reparations to the Ogiek community.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit arbitrary or unlawful interference, except "to

promote public benefit,” but authorities sometimes infringed on citizens’ privacy rights. The law permits police to enter a home without a search warrant if the time required to obtain a warrant would prejudice an investigation. Although security officers generally obtained search warrants, they occasionally conducted searches without warrants during large-scale security sweeps to apprehend suspected criminals or to seize property believed stolen.

Human rights organizations reported police officers raided homes in informal settlements in Nairobi and communities in the coastal region in search of suspected terrorists and weapons. The organizations documented numerous cases in which plainclothes police officers searched residences without a warrant, and household goods were confiscated when residents were unable to provide receipts of purchase on demand.

Section 2. Respect for Civil Liberties

a. Freedom of Expression, Including for Members of the Press and Other Media

The law provides for freedom of expression, including for members of the press and other media, but the government sometimes restricted this right.

Freedom of Expression: In 2017, a branch of the High Court declared unconstitutional the section of the law that criminalized “undermining the authority of a public officer,” ruling the provision violated the fundamental right of freedom of expression. Other provisions of the constitution and the law prohibiting hate speech and incitement to violence remained in force. The Judicial Service Commission, however, reported many cases were withdrawn due to failure of witnesses to appear in court or to facilitate mediation. Cases that did proceed often failed to meet evidentiary requirements.

Violence and Harassment: Journalists alleged security forces or supporters of politicians at the national and county levels sometimes harassed and physically intimidated or assaulted them. The government at times failed to investigate allegations of harassment, threats, and physical attacks on members of media or failed to provide victims access to information regarding their cases. Attacks

included threats, intimidation, online and offline harassment, invasion of media houses, and physical assaults resulting in some journalists seeking self-exile or engaging in self-censorship.

In March, security officials at opposition party Orange Democratic Movement headquarters assaulted two journalists covering a press conference. The Media Council of Kenya (MCK), a government regulatory body, condemned the attack as politically motivated violence targeting the journalists for publishing stories that had attracted verbal attacks and threats by party officials quoted in the stories.

The MCK documented 45 cases of press freedom abuses including attacks on journalists between January and May. In May, the MCK cautioned against “increasing incidences of profiling of and threats to individual journalists and media outlets by politicians related to 2022 general election campaigns.”

In June, a journalist from Royal Media Services alleged Bungoma County Governor Wycliffe Wangamati issued death threats over stories that portrayed the governor negatively. Authorities did not open investigations into these cases despite complaints filed by the journalists.

Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media: Mainstream media were generally independent, but there were reports by journalists that government officials pressured them to avoid certain topics and stories and intimidated them if officials judged journalists had already published or broadcast stories too critical of the government. There were also reports journalists were fired due to pressure from government officials seeking to sway editorial content. This caused some journalists to avoid covering topics or writing stories they believed their editors would reject due to direct or indirect government pressure. Journalists practiced self-censorship to avoid conflict with the government on sensitive subjects.

The government occasionally interpreted laws to restrict freedom of expression for members of the press, and officials occasionally accused international media of publishing stories and engaging in activities that could incite violence. Two laws give the government oversight of media by creating a complaints tribunal with expansive authority, including the power to revoke journalists’ credentials and levy

debilitating fines.

Some journalists reportedly lost their jobs over their actual or perceived political leanings. The NGO ARTICLE 19 East Africa expressed concerns regarding a trend where courts were issuing “exorbitant damages in civil suits” against media companies and individual journalists which could negatively impact media freedom.

In September, Kenya Film Classification Board (KFCB) Acting CEO Christopher Wambua stated during a radio interview that all movies containing lesbian, gay, bisexual, transgender, or queer (LGBTQ+) content are illegal in the country.

Actions to Expand Freedom of Expression, Including for Members of the Media: In May, a branch of the High Court declared unconstitutional sections of the law that criminalized publishing rumors and alarmist messages likely to cause fear among the public.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. Authorities, however, monitored websites for violations of hate speech laws. According to the *Freedom on the Net* report, authorities used laws on hate speech and defamation to prosecute online critics of the government. The report further stated while censorship is not widespread, the government has sought to remove online content considered immoral or defamatory.

By law, mobile telephone service providers may block mass messages they judge could incite violence. The National Cohesion and Integration Commission tracked bloggers and social media users accused of spreading hate speech.

Privacy International reported the National Intelligence Service had direct access to the country’s telecommunications networks that allows for the interception of communications data. Furthermore, Privacy International reported the National Police Service also had surveillance powers. Freedom House additionally reported authorities used various types of surveillance technologies to monitor citizens.

The government sought to protect personal information by regulating data processing, strengthening the right to privacy of individuals, establishing an Office of the Data Commissioner, and codifying data processors and controllers' legal responsibilities.

b. Freedoms of Peaceful Assembly and Association

Although the constitution and law provide for the freedoms of assembly and association, the government sometimes restricted these rights. Government failure to investigate or prosecute attacks on human rights defenders and peaceful protesters led to de facto restrictions on freedom of assembly and association.

Freedom of Peaceful Assembly

The constitution and law provide for freedom of assembly, but the government sometimes restricted this right. Police routinely denied requests for meetings filed by human rights activists, and authorities dispersed persons attending meetings that had not been prohibited beforehand. Organizers must notify local police in advance of public meetings, which may proceed unless police notify organizers otherwise. By law, authorities may prohibit gatherings only if there is another previously scheduled meeting at the same time and venue or if there is a perceived specific security threat. In April, plainclothes police officers assaulted and arrested activist Julius Kamau for protesting the high cost of living and held him at the Central Police Station in Nairobi for allegedly creating a disturbance. Also in April, authorities arrested four other protesters – Mino Kya, Clinton Ojiambo, Nahashon Macharia, and Anthony Kanyiri – who were demonstrating against high food prices.

Police used excessive force at times to disperse demonstrators. The local press reported on multiple occasions that police used tear gas to disperse demonstrators or crowds of various types.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right, but there were reports authorities arbitrarily denied this right in some cases. NGOs continued to express concerns regarding reprisals

faced by numerous human rights defenders and communities. Reprisals reportedly took the form of intimidation, termination of employment, beatings, and arrests and threats of malicious prosecution. Human rights groups noted activists continued to face increased attacks in a climate of impunity (see section 5).

There were reports of restrictions on workers' freedom of association, including in the agribusiness and public sectors. Trade unionists reported workers were dismissed for joining trade unions or for demanding respect for their labor rights (see section 7.a.).

The law requires every public association be either registered or exempted from registration by the Registrar of Societies. The law requires NGOs dedicated to advocacy, public benefit, or the promotion of charity or research to register with the NGO Coordination Board. It also requires organizations employing foreign staff to seek authorization from the NGO Coordination Board before applying for a work permit.

Despite two court rulings ordering the government to operationalize the 2013 Public Benefits Organization Act, a potentially important step in providing a transparent legal framework for NGO activities, the act had not been implemented by year's end.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement and the Right to Leave the Country

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation for citizens, and the government respected these rights, but it placed restrictions on movement for refugees.

In-country Movement: Refugees and asylum seekers were required to register with the Interior Ministry's Department of Refugee Services (DRS), and the law reiterated strict implementation of the encampment policy. The DRS is responsible for refugee management in the country and continued to enforce the

encampment policy requiring all refugees and asylum seekers to reside in the designated refugee camps, despite a 2017 Court of Appeal decision to the contrary.

Typically, the DRS issued newly arrived asylum seekers registration documents and movement passes requiring them to report to the camps. The government, however, maintained the 2016 suspension of registration services to asylum seekers from Somalia, leaving an estimated 80,000 Somali asylum seekers vulnerable to harassment from authorities due to their irregular immigration status in the country.

Refugees needing to move outside the designated areas (Kakuma camp, Kalobeyei settlement, and the Dadaab refugee camp complex) had to obtain a temporary movement pass issued by the DRS. Stringent vetting requirements and long processing times delayed the issuance of temporary movement passes in the camps.

Because of the government's COVID-19 prevention protocols for staff, the DRS continued significantly reduced client-facing activity in its Nairobi office for part of the year, including reducing the registration of new arrivals, which further limited refugee freedom of movement.

The law allows exemption categories for specific groups to live outside designated camp areas, including in protection and medical cases. The government granted limited travel permission to refugees to receive specialized medical care outside the camps, and to refugees enrolled in public schools. It made exceptions to the encampment policy for extremely vulnerable groups in need of protection. The government continued to provide in-country movement and exit permits for refugee interviews and departures for third-country resettlement.

Although there were no restrictions on movements of internally displaced persons (IDPs), stateless persons in the country faced restrictions on their movement (see section 2.g.).

e. Protection of Refugees

The national government's relationship with the Office of the UN High Commissioner for Refugees (UNHCR) improved during the year. The government

enacted a new refugee law in February and negotiated plans with UNHCR to begin transitioning the country's refugee camps into settlements where refugees would have enhanced access to public services and self-reliance opportunities. The transition plan, known colloquially as the "Marshall Plan" replaced the government's 2021 announcement that UNHCR should close all refugee camps in the country by June 30 and facilitate large-scale repatriations.

The Marshall Plan represents the government's implementation of its Comprehensive Refugee Response Framework strategy, designed to enhance refugee self-reliance. The government's insistence on maintaining a strict encampment policy, however, presented a continued obstacle to effective refugee integration and significant progress toward self-reliance.

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to camp-based refugees. The government generally coordinated with UNHCR to assist and protect refugees in the Dadaab and Kakuma refugee camps and urban areas. The government, however, maintained the suspension of registration for new asylum seeker arrivals from Somalia in Dadaab camp, leading to the expansion during the year of the unregistered Somali asylum seeker population to nearly 46,000 individuals residing in Dadaab. The government also periodically suspended the registration of Somali asylum seekers in Nairobi, further preventing vulnerable individuals from accessing refugee services.

Abuse of Migrants and Refugees: Police abuse, including detention of asylum seekers and refugees, continued, often due to a lack of awareness and understanding of the rights afforded to those holding refugee or asylum-seeker documentation or those who entered the country and were apprehended before obtaining asylum seeker documents. Most detainees were released after a court appearance or intervention by local legal aid organizations such as the Refugee Consortium of Kenya or Kituo Cha Sheria.

During the year the security situation in Dadaab remained precarious. There were no attacks on humanitarian workers and no detonations of improvised explosive devices (IEDs) within 15 miles of the refugee complex during the year. The security partnership between UNHCR and local police remained strong. UN

security teams reported unspecified kidnapping threats against humanitarian workers during the year, and there were reports of IEDs along the country's border with Somalia, but no humanitarians were attacked or abducted.

Gender-based violence against refugees and asylum seekers remained a problem, particularly for vulnerable populations, including women, children, and lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) refugees and asylum seekers. Reported incidents included domestic violence, rape, sexual assault, physical assault, psychological abuse, female genital mutilation/cutting (FGM/C), and early and forced marriage, particularly of Sudanese, South Sudanese, and Somali girls (see section 6, Women). Most urban refugees resided in informal settlements, where insecurity and gender-based violence were rampant.

Although there was increased community engagement to reduce gender-based violence and strengthen partnerships, including with the local authorities, women in woman-headed households, young girls separated from families due to conflict, and women and girls of lower social and economic status were most at risk. Girls and boys out of school were at risk of abuse, survival sex, and early marriage. Despite awareness programs in the camps, underreporting persisted due to community preference for *maslaha*, a traditional form of jurisprudence prevalent in the region, as an alternative dispute resolution mechanism; shortages of woman law enforcement officers; limited awareness of what constitutes gender-based violence among vulnerable populations; and barriers to meeting the medical forensic requirements for trying alleged rape cases.

Refugees have equal access to justice and the courts under the law, although refugees were often unable to obtain legal services because of the prohibitive cost and their lack of information on their rights and obligations. UNHCR, through its partners, continued to provide legal assistance and representation to refugees to increase their access to justice.

Many refugees dealt with crime in accordance with their own customary law and traditional practices, although some opted to go through the country's justice system. Other security problems in refugee camps included petty theft, banditry, and ethnic violence, according to UNHCR.

Freedom of Movement: Refugees' freedom of movement was significantly restricted due to the country's strict encampment policies (see section 2.d.).

Employment: Refugees were generally not able to work officially in the country, although the law affirms refugees should be able to participate in the economy. Access to work permits was limited. Nonetheless, many refugees operated small trading businesses in the camps or participated in daily wage labor such as construction.

Access to Basic Services: Despite the encampment policy, many refugees resided in urban areas, even though they lacked documentation authorizing them to do so. This affected their access to basic government services, including the National Hospital Insurance Fund, education, employment, business licenses, financial institutions, mobile phones, and related services. Additionally, they were vulnerable to arrest, police harassment, and extortion.

Durable Solutions: During the year, UNHCR assisted 1,300 refugees with voluntary repatriation to their places of origin, including Somalia, Burundi, and the Democratic Republic of the Congo. Insecurity and unfavorable conditions in countries of origin such as South Sudan and Somalia limited the desire among refugees for voluntary repatriation assistance.

f. Status and Treatment of Internally Displaced Persons

The NGO Internal Displacement Monitoring Centre (IDMC) estimated there were 190,000 IDPs in the country at the end of 2021, mostly due to natural disasters such as drought and flooding, as well as urban construction projects led by state and private actors, usually during the construction of dams, railways, and roads. The government provided food assistance to displaced persons in drought-affected areas. There is no mechanism to provide compensation or other remedies to victims of these displacements. IDMC reported 366 persons were displaced by conflict during the year. Additionally, some residents remained displaced during the year due to land tenure disputes, particularly in or around natural reserves (see section 1.e.). Water and pasture scarcity exacerbated communal conflict and left an unknown number of citizens internally displaced, especially in arid and semiarid areas. According to the United Nations Office for the Coordination of

Humanitarian Affairs, many of the individuals in question are pastoralists who periodically move in search of water and pasture. The government has policies in place for IDPs, but they were rarely implemented.

g. Stateless Persons

The constitution and law provide for the protection of stateless persons and for legal avenues for eligible stateless persons to apply for citizenship. During the year, UNHCR estimated 15,500 stateless persons were registered in the country; the actual number was unknown.

In 2021, the government formally granted citizenship to 1,670 Shona and 1,300 individuals of Rwandan descent who were previously stateless. The government followed through on its promise to provide documentation to these groups during the year, and media reports highlighted some formerly stateless individuals exercising their right to vote in the August general election.

Communities known to UNHCR as stateless included the Pemba in Kwale (approximately 7,000 persons) and persons of Burundian or Congolese descent; some descendants of slaves from Zambia and Malawi; the Galjeel, who were stripped of their nationality in 1989; Nubians brought to the country from Sudan by British colonial authorities; and smaller groups at risk of statelessness due to their proximity to the country's borders with Somalia and Ethiopia, including the Daasanach and returnees from Somalia (the Sakuye) residing in Isiolo. The Pare were a group who intermarried with Kenyans for many years who resided at the border with Tanzania but were at risk of statelessness since they did not hold marriage certificates or other identity documents. Children born in the country to British overseas citizens are stateless due to conflicting nationality laws in the country and the United Kingdom; the estimated affected population size was unknown.

The country's legislation provides protection, limited access to some basic services, and documentation to stateless persons and those at risk of statelessness. The constitution contains a progressive bill of rights and a revised chapter on citizenship, yet it does not include any safeguards to prevent statelessness at birth. The law provides a definition of a stateless person and opportunities for such a

person as well as his or her descendants to be registered as citizens so long as the individual was a resident in the country at the time of its independence. The National Assembly accepted a recommendation from the National Security and Administration Committee to confer citizenship to the Pemba community, and in December, President Ruto announced the government would initiate modalities to recognize the Pemba people as citizens.

Stateless persons had limited legal protection, and many faced social exclusion. Others encountered travel restrictions and heightened vulnerability to gender-based violence, exploitation, forced displacement, and other abuses. UNHCR reported stateless persons faced restrictions on internal movement and limited access to basic services, property ownership, and registration of births under the late birth registration procedures, marriages, and deaths. Inadequate documentation sometimes resulted in targeted harassment and extortion by officials and exploitation in the informal labor sector.

National registration policies require citizens 18 years of age and older to obtain national identification documents from the National Registration Bureau (NRB). Failure to do so is a crime. Groups with historical or ethnic ties to other countries faced higher burdens of proof in the registration process. During the participatory assessments UNHCR conducted in 2018 and 2019, stateless persons stated they could not easily register their children at birth or access birth certificates because they lacked supporting documents. The lack of permanent NRB offices near refugee camps also made it more difficult for refugees to register births, leading to an increased risk of statelessness. UNHCR and NGO partners worked with the government during the year to facilitate regular missions to the camps by NRB officials to conduct birth registrations and resolve the backlog of older cases. During the year, refugees were able to register births within six months.

Formal employment opportunities, access to financial services, and freedom of movement continued to be out of reach for stateless persons due to lack of national identity cards. Stateless persons without identity cards could not access the National Hospital Insurance Fund, locking them out of access to subsidized health services, including maternity coverage.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: In August, citizens voted in the third general election under the 2010 constitution, electing executive leadership and parliamentarians, county governors, and members of county assemblies. International and domestic observers, such as the Kenya Elections Observation Group, African Union Observer Mission, the Commonwealth, the East African Community, and the joint International Republican Institute and National Democratic Institute International Election Observation Mission, all judged the elections credible, with notable improvements in election operations and use of technology. In the presidential election, United Democratic Alliance candidate William Ruto defeated Raila Odinga of Azimio La Umoja One Kenya coalition by a narrow margin. Odinga alleged irregularities and challenged the results in a petition to the Supreme Court. On September 5, the court upheld Ruto's election as the fifth president of the country.

Opposition candidate Odinga claimed the vote was marred by rigging and irregularities in what many observers considered the country's most peaceful election. The Supreme Court unanimously agreed there were no significant irregularities in the election. The court acknowledged that while the Independent Electoral and Boundaries Commission (IEBC) needed "far-reaching reforms," this was not enough to invalidate the election. Although Odinga disagreed with the court's findings, he accepted the decision, which paved way for Ruto's swearing-in on September 13.

IPOA's preliminary assessment of police conduct during the August 9 general election found police were better organized and more professional than in previous election cycles. IPOA was, however, investigating several complaints including shootings, attempted rapes, and assaults by police during the election period. The state-affiliated KNCHR documented during the year seven deaths before and

during the elections. This represented a significant drop from the 99 deaths recorded in 2017.

Political Parties and Political Participation: To reduce voter fraud, the government used a biometric voter registration system. Possession of a national identity card or passport was a prerequisite for voter registration. In June 2021, some voters found their names on the membership lists of parties for which they had not registered, sparking concerns regarding voters' data privacy. The IEBC conducted a second round of enhanced voter registration January 16 to February 6. The IEBC had aimed to register more than six million new voters, but ultimately registered approximately 2.5 million new voters.

Participation of Women and Members of Minority Groups: No law limits participation of women or members of minority groups in the political process, and they did participate. Voting rates and measures of other types of participation in the political process by women and members of minority groups remained lower than those of nonminority men. Persons with disabilities and Indigenous groups participated in the political process, whereas LGBTQ+ individuals did not participate openly, although intersex persons did.

Women leaders and advocacy groups continued to cite inadequate political support from their parties, particularly in the primaries; a lack of financial resources; gender-based violence, including rape; sexual harassment; cyber bullying; verbal abuse and hate speech; gender stereotyping; and patriarchal structures across society as significant barriers to women's participation in political processes.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption. There were numerous reports of government corruption during the year. Officials frequently engaged in allegedly corrupt practices with impunity. Despite public progress in fighting corruption, the government continued to face hurdles in implementing relevant laws effectively. The judiciary accelerated processing of corruption cases through adoption of virtual court sessions.

The Ethics and Anti-Corruption Commission (EACC) has the legal mandate to investigate official corruption allegations, develop and enforce a code of ethics for public officials, and engage in public outreach on corruption. The EACC, however, lacks prosecutorial authority and must refer cases to the ODPP to initiate prosecutions. The government took additional steps during the year to combat corruption, including increasing the number of investigations and prosecutions. In February, the chief justice established a multi-agency Anti-Corruption Committee comprising the ODPP, Law Society of Kenya, IPOA, EACC, DCI, the judiciary, Kenya Private Sector Alliance, Witness Protection Agency, and the Office of the Attorney General. The committee is mandated to identify the bottlenecks and challenges in the fight against corruption and make recommendations on how to address them. Because courts had significant case backlogs and relied heavily on trials (rather than settlements), corruption cases could take years to resolve.

Corruption: In June, the Supreme Court upheld the 2021 impeachment of one of two governors indicted and impeached in a 2021 landmark ruling that barred officials who have been impeached for corruption, even if not yet convicted, from holding public office. The EACC continued investigating high-level procurement irregularities at the Kenya Medical Supplies Agency, a state agency with the sole mandate of procuring medications and equipment for government health centers. The investigations involved procurement of personal protective equipment at inflated costs and the alleged disappearance of personal protective equipment and other equipment donated to the country. In September 2021, the Anti-Corruption Court sentenced on corruption charges former Sport Cabinet Secretary Hassan Wario, who eventually paid a fine of 3.6 million Kenyan shillings (\$30,770) and was released.

The Assets Recovery Agency continued efforts to recover proceeds of crime. In July, the Anti-Corruption Court seized 200 million Kenyan shillings (\$1.7 million) from Rigathi Gachagua, then deputy presidential candidate and now the deputy president, due to corruption allegations.

Following the election of President Ruto, the ODPP withdrew or took steps to withdraw criminal charges in several economic corruption cases.

The public continued to perceive corruption as a severe problem at all levels of

government. Police corruption remained a significant problem. Human rights NGOs reported police often stopped and arrested citizens to extort bribes. Police sometimes jailed citizens on trumped-up charges or beat those who could not pay the bribes. The judiciary and the National Police Service continued measures to reform the handling of traffic cases by police and courts, streamlining the management of traffic offenses to curb corruption. Despite this progress, no senior police official was convicted or jailed for corruption-related offenses during the year.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases, although some groups reported experiencing government harassment. Officials were sometimes cooperative and responsive to the queries of these groups, but the government did not implement recommendations by human rights groups if such recommendations were contrary to its policies.

Retribution against Human Rights Defenders: There were reports officials intimidated NGOs and threatened to disrupt their activities (see section 2.b.). Less-established NGOs, particularly in rural areas, reported harassment and threats by county officials as well as by security forces. Human rights activists claimed security forces conducted surveillance of their activities, and some reported threats and intimidation.

There were also reports that officials and police officers threatened activists who sought justice for police killings and other serious abuses. The intimidation included threats of arrest, warnings not to post information concerning police brutality, home and office raids, and confiscation of laptops and other equipment.

In January, Elizabeth Ibrahim Ekaru, a leading women's rights activist and environmental and land rights leader from Isiolo County, was killed by her neighbor over a land dispute. The NGO Defenders Coalition condemned the

killing and noted the killing of women's rights activists in the country had reached alarming levels.

In July, the High Court found three policemen and one civilian guilty of the 2016 triple homicide of International Justice Mission lawyer and investigator Willie Kimani, his client Josphat Mwenda, and their driver Joseph Muiruri. The court revealed in detail how Kimani was abducted while leaving the Mavoko law courts in Machakos County and was tortured and killed along with his client and driver. As of year's end, sentencing had not been announced.

The KNCHR reported security agencies continued to deny it full access to case-specific information and facilities to conduct investigations of human rights abuses as the constitution permits. The commission, however, noted improved access to detention facilities during the year.

Government Human Rights Bodies: The KNCHR is an independent institution created by the constitution and established in 2011. Its mandate is to promote and protect human rights in the country. In December 2021, then President Kenyatta appointed a new chairperson, Roseline Odede, and four commissioners, and they took office in March following parliamentary approval. The commission stated their budget only covered facilities and staff salaries and was insufficient to cover its expenses and fulfill its mandate. The commission had 115 staff members but was mandated for 400. Its programmatic budget was entirely unfunded by the government, forcing the commission to secure funding from development partners.

The National Police Service Commission (NPSC) and IPOA, both government bodies, report to the National Assembly. The NPSC consists of six civilian commissioners, including two retired police officers, as well as the National Police Service inspector general and two deputies. The NPSC is responsible for recruiting, transferring, vetting, promoting, and disciplining National Police Service members.

The ODPP is empowered to direct the National Police Service inspector general to investigate any information or allegation of criminal conduct and to institute criminal proceedings in police abuse or corruption cases.

Police accountability mechanisms, including those of the IAU and IPOA,

maintained their capacity to investigate cases of police abuse. The IAU director reports directly to the National Police Service inspector general. The IAU conducts investigations into police misconduct, including criminal offenses not covered by IPOA. The EACC, an independent agency, investigates cases involving police corruption. IPOA also helps to train police officers on preventing human rights abuses and provided human rights training for 30 staff during the year.

Between July 2021 and June 30, IPOA received 3,302 complaints. IPOA defines five categories of complaints. Category one complaints comprise the most serious crimes, such as murder, torture, rape, and serious injury, and result in an automatic investigation. In category two, serious crimes, such as assault without serious injury, are investigated on a case-by-case basis. Categories three to five, for less serious crimes, are generally not investigated, although during the year IPOA and the IAU entered regular dialogue concerning referring cases deemed less serious offenses for disciplinary action. If, after investigation, IPOA determines there is criminal liability in a case, it forwards the case to the ODPP. Although the law requires the NPSC to vet all serving police officers, it had not vetted any officers since the new commission took office in 2019. Vetting required an assessment of each officer's fitness to serve based on a review of documentation, including financial records, certificates of good conduct, and a questionnaire, as well as public input alleging abuse or misconduct.

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: The law criminalizes rape of all persons, defilement (statutory rape), domestic violence, and sex tourism, but enforcement remained limited. The law's definition of domestic violence includes sexual violence within marriage, early and forced marriage, FGM/C, forced wife "inheritance," damage to property, defilement, economic abuse, emotional or psychological abuse, harassment, incest, intimidation, physical abuse, stalking, verbal abuse, or any other conduct against a person that harms or may cause imminent harm to the safety, health, or well-being of the person. The law does not explicitly criminalize spousal rape. Insulting the modesty of another person by

intruding upon that person's privacy or stripping them of clothing are criminal offenses punishable by imprisonment for up to 20 years.

The law provides a maximum penalty of life imprisonment for rape when the survivor is older than 18, although sentences were at the discretion of the judge and usually no longer than the minimum of 10 years (see section 6, Children).

According to human rights groups, the government often did not enforce the law effectively, especially in poor or rural areas. Citizens frequently used traditional dispute-resolution mechanisms, including *maslaha* in Muslim communities, to address sexual offenses in rural areas, with village elders assessing financial compensation for the survivors or their families. They also used such mechanisms occasionally in urban areas. A lack of coordination between government agencies and ineffective implementation of the law often left victims of sexual assault without recourse or in direct contact with the perpetrator.

The NGO FIDA reported arrests and prosecutions of sexual violence cases remained low, even in cases in which survivors identified perpetrators, due to limited police resources to conduct investigations, insufficient evidence collection and handling mechanisms, and lengthy court proceedings, which made it difficult and expensive for survivors to pursue cases. During the general election period, FIDA noted an increase in gender-based violence targeting women running for political office. In November, FIDA released its report on election-related sexual and gender-based violence documenting 1,746 incidents between April and September, dominated by verbal abuse and hate speech (54 percent) and cyber bullying (23 percent). The report also documented cases of sexual assault, harassment, attempted rape, and other violent incidents.

Although police no longer required physicians to examine survivors, physicians still had to complete official forms reporting rape. Rural areas generally had no police physician, and Nairobi had only three. NGOs reported police stations often but inconsistently accepted the examination report of clinical physicians who initially treated rape survivors. In April, the government launched the Nanyuki "Policare" center to handle gender-based violence cases in the region under a one-stop shop approach combining forensic experts, medics, counsellors, and judiciary. Police also launched an updated *Integrated Response to Gender-Based Violence* document, which standardized procedures and standards of care in these cases.

Authorities cited domestic violence as the leading cause of preventable, nonaccidental death for women. Except in cases of death, police officers generally refrained from investigating domestic violence, which they considered a private family matter.

Female Genital Mutilation/Cutting (FGM/C): The law makes it illegal to practice FGM/C, procure the services of someone who practices FGM/C, or send a person out of the country to undergo the procedure. The law also makes it illegal to make derogatory remarks concerning a woman who has not undergone FGM/C. Government officials often participated in public-awareness programs to prevent the practice. Nevertheless, individuals practiced FGM/C widely, particularly in some rural areas. According to UNICEF, despite the legal prohibition of FGM/C and progress made by the government in eliminating the practice, myths supporting the practice remained deeply rooted in some local cultures. UNICEF estimated 21 percent of adult women ages 15 to 49 had undergone the procedure some time in their lives, but the practice was heavily concentrated in a few communities, including the Maasai (78 percent), Samburu (86 percent), and Somali (94 percent).

As part of the government's initiative to end FGM/C by the end of the year, the Ministry of Public Service, Gender, Senior Citizens Affairs, and Special Programs continued work with county officials and nonstate actors to improve enforcement of the FGM/C law. This included education and advocacy efforts as well as prosecutions of those violating the law. Media reported arrests of perpetrators and parents who agreed to FGM/C, but parents in regions with a high prevalence of FGM/C frequently bribed police to allow the practice to continue. There were also reports FGM/C increasingly occurred in secret to avoid prosecution. County officials in areas with a high prevalence of FGM/C noted many cases targeted infants, with one recent government study finding an estimated 61 percent of girls younger than five in one county had undergone the procedure.

Other Forms of Gender-based Violence: Certain communities practiced wife inheritance, in which a man inherits the widow of his brother or other close relative, regardless of her wishes. The practice was more likely in cases of poor women with limited access to education and living outside of major cities.

Sexual Harassment: The law prohibits sexual harassment and prescribes prison time of at least three years or a fine of at least 100,000 Kenyan shillings (\$854) or both for anyone found guilty of committing such crimes. Authorities rarely enforced the law, because sexual harassment was often not reported, and survivors rarely filed charges.

Reproductive Rights: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. See the Female Genital Mutilation/Cutting (FGM/C) subsection for additional information.

Barriers to sexual and reproductive health access included the prohibitive cost of contraception for poor persons, limited availability of information and services, and cultural and religious norms in some areas that discouraged the use of modern contraceptives and gave men decision-making authority over women. Subsidized contraception options, including condoms, birth control pills, and long acting or permanent methods, were available to both men and women, although access was more difficult in rural areas. Emergency contraception is available in both public and private facilities. Occasional lack of supply in public facilities limited access. NGOs reported that it was more difficult for marginalized groups, including LGBTQI+ persons, women with disabilities, displaced persons, and persons with HIV, to access reproductive health information and services.

A 2019 study by the Guttmacher Institute found that more than half of sexually active adolescent women between the ages of 15 and 19 who did not want to become pregnant had an unmet need for modern contraception and that almost two-thirds of pregnancies among this age group were unintended. The adolescent birth rate was 96 per 1,000 girls between the ages of 15 and 19, according to the UN Population Fund (UNFPA). Access to sexual and reproductive health information by adolescents remained a problem due to lack of comprehensive sexuality education in schools, low coverage of youth-friendly services, and a lack of adequate stocks of contraceptives in public hospitals.

Skilled obstetric, prenatal, and postpartum care was available in major hospitals, but many women could not access or afford these services. Skilled health-care personnel attended an estimated 62 percent of births, according to the 2014 *Kenya Demographic Health Survey*. The government provided access to sexual and

reproductive health services for survivors of sexual violence. Emergency contraception was available in public and private facilities in line with national guidelines.

Maternity services were free of charge in all public health institutions in the country. The government's Linda Mama program, a free health insurance plan that covers the pregnancy period and up to three months postdelivery, targeted women in rural and low-income areas and continued to operate during the year. There were no documented barriers for survivors of sexual violence who became pregnant. Survivors, however, faced barriers due to the lack of awareness of where to access services and care.

Maternal deaths accounted for 51 percent of all deaths of women between the ages of 15 and 49, and the maternal mortality rate was 342 per 100,000 live births, according to the World Health Organization. Unsafe abortion, complications during pregnancy and childbirth, poor quality of care, limited access to health services, and harmful practices referenced below were cited as among the main causes of maternal death and morbidity. UNFPA reported that maternal mortality in Mandera County was 3,795 deaths per 100,000 live births – the highest in the country – partially due to harmful practices such as FGM/C and limited access to health services. In 2019, the High Court ruled that the director of medical services and the Ministry of Health had violated the rights of the country's women by arbitrarily withdrawing standards and guidelines on reducing morbidity and mortality from unsafe abortions.

The law provides pregnant girls the right to continue their education until and after giving birth, but NGOs reported schools often did not respect this right (see section 6). Human rights organizations reported teenage pregnancy often led girls to drop out of school without a safety net or plan for continued education after giving birth.

Discrimination: The constitution provides equal rights for men and women and specifically prohibits discrimination on the grounds of race, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language, or birth. Nevertheless, the justice system widely applied customary laws that discriminated against women, limiting their political and economic rights.

The constitution prohibits gender discrimination in relation to land and property ownership and gives women equal rights to inheritance and access to land. The constitution also provides for the enactment of legislation for the protection of wives' rights to matrimonial property during and upon the termination of a marriage, and it affirms parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and at its dissolution. In September 2021, a judge presiding over a matrimonial property dispute ruled being a housewife should be considered a full-time job. The judge ruled it was unfair for courts to rule that housewives do not contribute to household financial wellbeing.

According to civil society groups, women continued to face institutional and legal barriers that hindered their access to justice and a fair share of matrimonial property upon the dissolution of marriage. Additionally, the components of the law that stipulate how to apply for succession were not well known, and thus many inheritances continued to pass from fathers to sons only.

The government did not always effectively enforce the law. Human rights organizations reported women frequently faced barriers to accessing equal rights in traditional, rural, and poor areas. Activists reported women members of specific groups, including persons with disabilities, LGBTQI+ persons, and Muslims experienced discrimination based on male-dominated social norms.

Systemic Racial or Ethnic Violence and Discrimination

Although the constitution declares the state shall not discriminate against any person based on race, societal discrimination against persons of different racial and ethnic groups was common. Enforcement of laws prohibiting discrimination was inadequate, according to human rights groups. The 2019 census recognized 45 ethnic groups in the country; none were a majority. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their traditional home areas, which sometimes resulted in fierce resentment from other ethnic groups, especially in the coastal and Rift Valley areas. Competition for water and pasture was especially serious in the north and northeast.

There was frequent conflict, including banditry, fights over land, and cattle rustling, among the Somali, Turkana, Gabbra, Borana, Samburu, Rendille, and

Pokot ethnic groups in the arid northern, eastern, and Rift Valley areas that at times resulted in deaths. Disputes regarding county borders were also a source of ethnic tensions. Banditry-related violence in parts of the Rift Valley, especially in Kerio Valley, rose during the year.

The International Crisis Group reported at least 35 persons died, and dozens of homes were burned in western Laikipia County between September 2021 and July in violent clashes between armed cattle herders and farmers, ranchers, and conservancies. A two-year drought forced pastoralists to trespass on privately run nature conservancies in search of water and grazing land for their livestock. Government forces deployed to the region to quell the violence, but the situation continued to be tense.

Ethnic differences also caused several discriminatory employment practices (see section 7.d.).

Children

Birth Registration: A child derives citizenship from the citizenship of the parents, and either parent may transmit citizenship. Birth in the country's territory does not convey citizenship. Birth registration is compulsory. Lack of an official birth certificate resulted in denial of services such as health services, voting, banking, and mobile phone services. The Department of Civil Registration Services implemented the Maternal Child Health Registration Strategy, which requires nurses administering immunizations to register the births of unregistered children.

Education: By law, education is tuition-free and compulsory until age 18, although public schools may impose fees for boarding, uniforms, and other expenses. The law also allows schools to charge tuition and other fees for children who are noncitizens of the country. Authorities did not enforce the mandatory attendance law uniformly. Children with disabilities were less likely to attend school. There were media reports that boarding school administrators sometimes expelled LGBTQI+ students.

While the law provides pregnant girls the right to continue their education until and after giving birth, NGOs reported schools did not always respect this right (see

section 6, Women - Reproductive Rights). School administrators sometimes expelled pregnant girls or transferred them to other schools. In recent years media outlets reported a significant number of girls failed to take their final secondary school examinations due to pregnancy.

Child Abuse: The law criminalizes several forms of violence that affect children, including early and child marriage (see section 6, Child, Early, and Forced Marriage), FGM/C, incest, and physical, verbal, and sexual abuse. Violence against children, particularly in poor and rural communities, was common, and child abuse, including sexual abuse, occurred frequently. A recent Ministry of Labour report found nearly half of girls and more than half of boys experienced childhood violence. The study found emotional violence was also common.

Child abuse cases were difficult to prosecute. According to the ODPP, cases were often dropped because the perpetrators were close family members who denied the allegations or prevented the child from appearing or speaking in court. Many cases went unreported, especially those involving incest, defilement (statutory rape), and rape. Prosecutors continued to request alternative homes for children involved in abuse cases, but lack of funding was often prohibitive. During the year, ODPP and the Children's Division held 10 training sessions for 320 prosecutors to develop skills for interviewing vulnerable witnesses and survivors of gender-based violence, including children, as well as on the new Children's Act 2022.

According to IPOA, most police facilities did not have designated child protection units, and police usually requested the Department of Children Services to take custody of child survivors. Although all the police facilities that IPOA inspected during the year had at least one officer designated to handle children's cases, only some of the officers had received training on handling these cases, and the police stations did not have sufficient resources to process the large number of cases involving child survivors. IPOA found the shortage of designated child protective units made it difficult for officers to record statements from child survivors due to the lack of privacy. According to IPOA, police also reported difficulties investigating cases such as child rape, since some communities defended the perpetrators and preferred to settle cases through traditional mechanisms.

The minimum sentence for conviction of statutory rape is life imprisonment if the

survivor is younger than age 11; 20 years in prison if the survivor is between ages 11 and 15; and 10 years' imprisonment if the survivor is age 16 or 17. Although exact numbers were unavailable, during the year media reported several statutory rape convictions.

In May, the Ministry of Health reported that 9,484 children ages 12-17 were defiled in 2021, including by men infected with sexually transmitted diseases such as HIV.

The government banned corporal punishment in schools, but there were reports corporal punishment occurred.

Although there were no reports the government recruited child soldiers, there were reports the al-Shabaab terrorist group recruited children in areas bordering Somalia.

Child, Early, and Forced Marriage: The minimum age for marriage is 18 years for women and men. According to UNICEF, 25 percent of girls were married by age 18. Media occasionally highlighted the problem of early and forced marriage common among some ethnic groups.

Sexual Exploitation of Children: The law criminalizes sexual exploitation of children, including prohibiting procurement of a child younger than age 18 for unlawful sexual relations. The law also prohibits internal and transnational trafficking or the recruitment, harboring, transportation, transfer, or receipt of children up to age 18 to produce pornography or for pornographic performances. Provisions apply equally to girls and boys. The law has provisions regarding child trafficking, child sex tourism, child sexual exploitation, and child pornography. The minimum age for consensual sex is 18. Nevertheless, according to human rights organizations, children were sexually exploited and victims of trafficking. Authorities did enforce laws against child pornography, but implementation was not always effective.

The DCI maintained its Anti-Human Trafficking and Child Protection Unit, which is responsible for investigating cases of child sexual exploitation and abuse, providing guidance to police officers across the country on cases involving children, and liaising with the Ministry of Labour's Department of Children

Services to identify and protect abused children.

Displaced Children: Poverty and the spread of HIV continued to intensify the problem of child homelessness. Street children faced harassment and physical and sexual abuse from police and others, as well as from within the juvenile justice system (see section 1.c.). The government operated programs to place street children in shelters and assisted NGOs in providing education, skills training, counseling, legal advice, and medical care to street children whom the commercial sex industry abused and exploited. According to UNHCR, 52 percent of refugees were younger than age 18 (see section 2.d.).

Children continued to face protection risks in urban areas, particularly unaccompanied and separated children. Alternative care arrangements, such as foster care placement, were in place for a limited number of children. Additionally, government child protection services and the children's department often stepped in to provide protection to children at risk, particularly unaccompanied children.

The country had only four orphanages that accept children living with HIV and AIDS. The oldest of the four, Nyumbani Children's Home in Nairobi, received numerous complaints of physical, mental, and sexual abuse of its children. Children not accepted into one of the four orphanages were often shunned by their communities and sometimes came into conflict with the criminal justice system, became homeless, or were vulnerable to trafficking.

Antisemitism

The Jewish community was small, and there were no reports of antisemitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex

Characteristics

Criminalization: The penal code criminalizes “carnal knowledge against the order of nature,” which was interpreted to prohibit consensual same-sex sexual conduct and specifies a maximum penalty of 14 years’ imprisonment if convicted, and seven years for “attempting” said conduct. The law also criminalizes acts of “gross indecency” between men, whether in public or in private, with five years’ imprisonment. Police detained persons under these laws, particularly persons suspected of prostitution, but released them shortly afterward.

LGBTQI+ organizations reported police more frequently used general public-order laws (for example, disturbing the peace) to arrest or harass LGBTQI+ individuals. NGOs reported police frequently harassed, intimidated, or physically abused LGBTQI+ individuals in custody. They also reported police threatened gay men while in custody with forced anal examinations, which were outlawed in 2018.

Violence against LGBTQI+ Individuals: Nonstate actor violence and discrimination against LGBTQI+ individuals were widespread. In April, Sheila Adhiambo Lumumba, a nonbinary member of the LGBTQI+ community, was found dead at home after being raped, stabbed, and beaten. LGBTQI+ activists alleged the attack was due in part because Lumumba identified as a nonbinary lesbian and rejected the perpetrator’s sexual advances. Following an investigation, police arrested and charged a suspect in Lumumba’s killing but there was no date for the trial at year’s end. In May, media reported on the rape and killing of an intersex person in Trans-Nzoia County. Police had not charged anyone with these crimes at year’s end.

Discrimination: The constitution does not explicitly protect LGBTQI+ persons from discrimination based on sexual orientation, gender identity or expression, or sex characteristics, nor does it recognize LGBTQ+ individuals, couples, or their families (see next section for information on recognition of intersex persons). The law does not specifically recognize the rights of LGBTQ+ persons within the areas of housing, employment, education, or healthcare. Although the country granted refugee status to persons who are persecuted due to sexual orientation or gender expression, some LGBTQI+ refugees continued to face stigma and discrimination, as well as delays in processing their asylum applications. They were often

compelled to hide their sexual orientation or gender identity to protect themselves, especially among Somali refugee communities in Dadaab. National organizations working with LGBTQI+ persons offered support to refugees who were LGBTQI+, including access to safety networks and specialized health facilities.

There were approximately 1,000 LGBTQI+ refugees in the country, including approximately 300 in Kakuma, where there were some reports of community violence and intimidation against LGBTQI+ refugees during the year. UNHCR and NGO partners provided medical and other assistance for LGBTQI+ refugees when necessary, but legal accountability for perpetrators was lacking overall.

Availability of Legal Gender Recognition: New legislation enshrined the rights of intersex persons to formally identify “intersex” or “I” as the third gender. The law only allows intersex persons identified as male or female at birth to request a change to “I.” While the law recognized biologically different persons, it did not cover or normalize gender-nonconformity or nonbinary designations associated with LGBTQI+ persons.

Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals: LGBTQI+ rights organizations reported an increase in so-called conversion therapy and “corrective rape” practices, including forced marriages, exorcisms, physical violence, psychological violence, or detainment. It attributed this increase to the fact many LGBTQI+ persons had returned to hostile home and community environments after losing their jobs because of the economic downturn caused by the COVID-19 pandemic. According to the KNCHR, infants and children born with physical sex characteristics that did not align with either a typical male or female body were subjected to harmful medical practices for years in attempt to “normalize” them. After years of advocacy by the intersex community, during the year the country amended the Children’s Rights Act protecting children from unnecessary harmful genital surgeries.

Restrictions of Freedom of Expression, Association, or Peaceful Assembly: Authorities permitted LGBTQI+ advocacy organizations to register and conduct activities. In July, however, police arrested four activists in Malindi while they held a lawful assembly regarding problems affecting the LGBTQI+ community in

the coastal region of the country. Defenders Coalition alleged police were systematically harassing and intimidating the sexual- and gender-identity activists. Police reportedly detained the activists and released them on condition they disperse.

Authorities restricted freedom of expression. In February, the KFCB banned the Indian film *Badhaai Do*, alleging it would promote the notion that same-sex marriage was acceptable. The board claimed the film violated the penal code, which outlaws homosexuality, as well as provisions of the Films and Stage Plays Act (see also section 2.a., Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media).

Persons with Disabilities

Persons with disabilities could not access education, health services, public buildings, and transportation on an equal basis with others. The general election during the year highlighted the challenges persons with disabilities faced at polling stations. The law prohibits discrimination against persons with disabilities, but the government did not effectively enforce these provisions. Several laws limit the rights of persons with disabilities. For example, the Marriage Act limits the rights of persons with mental disabilities to marry, and the Law of Succession limits the rights of persons with disabilities to inheritance. The constitution provides for legal representation of persons with disabilities in legislative and appointive bodies.

The Ministry for Devolution and Planning is the lead ministry for implementation of the law to protect persons with disabilities. The quasi-independent but government-funded parastatal National Council for Persons with Disabilities assisted the ministry. Neither entity received sufficient resources to address effectively problems related to persons with disabilities.

The constitution states every person has the right to education, yet NGOs reported persons with disabilities had limited opportunities to obtain education and job training at any level due to lack of accessibility of facilities and resistance by school officials and parents to devoting resources to students with disabilities. Obtaining employment was also difficult. According to an official at the Ministry

of Education, securing funding for children with disabilities was difficult because local society often failed to see the value of children with disabilities and thus allocated funds elsewhere.

Persons with disabilities faced significant barriers to accessing health care. They had difficulty obtaining contraceptive services and HIV testing due to the perception they should not engage in sexual activity. According to the NGO Humanity & Inclusion, 36 percent of persons with disabilities reported facing difficulties in accessing health services; cost, distance to a health facility, and physical barriers were the main reasons cited.

The law provides that persons with disabilities should have access to public buildings, and some buildings in major cities had wheelchair ramps and modified elevators and restrooms. The government did not enforce the law, however, and new construction often did not include specific accommodations for persons with disabilities. Government buildings in rural areas generally were not accessible to persons with disabilities. According to NGOs, police stations remained largely inaccessible to persons with mobility and other physical disabilities. Most common forms of public transportation, all of which were privately operated, were difficult for persons with physical disabilities to use due accessibility challenges and crowding.

There were media reports of children with disabilities trafficked from Tanzania to work as beggars in Kenya.

Few facilities provided interpreters or other accommodations to persons with hearing disabilities. The government assigned each region a sign language interpreter for court proceedings. Authorities often delayed or adjourned cases involving persons who had hearing disabilities due to a lack of standby interpreters, according to NGO reports.

According to a report by a coalition of disability advocate groups, persons with disabilities often did not receive the procedural or other accommodations they needed to participate equally in criminal justice processes as victims of crime.

During the general election, observers noted that persons with disabilities were disadvantaged at the polls. Some polling stations were inaccessible to persons with

mobility problems, while others lacked staff to assist persons with visual or hearing impairments, which led to violations of privacy for some voters.

Other Societal Violence or Discrimination

The government, along with international and NGO partners, made progress in creating an enabling environment to combat the social stigma of HIV and AIDS and to address the gap in access to HIV information and services. The government and NGOs expanded their staffing support at county levels for counseling and testing centers to ensure provision of free HIV and AIDS diagnosis. The government continued including diverse populations in provision of HIV services through 47 mobile clinics and medical camp safaris across the country. The government also supported programs to ensure nondiscrimination and undertook a community-led stigma index study.

Stigma nonetheless continued to hinder efforts to educate the public regarding HIV and AIDS and to provide testing and treatment services. The government continued to support the HIV and AIDS Tribunal to handle all legal matters related to stigma and discrimination. The tribunal, however, lacked sufficient funding to carry out its mandate across all 47 counties and thus still functioned only out of Nairobi.

Persons with albinism were historically targets of discrimination and human rights abuses. Human rights groups successfully lobbied to include a question on albinism in the 2019 national census, the first time that persons with albinism were counted.

Mob violence and vigilante action were common in areas where the populace lacked confidence in the criminal justice system. The social acceptability of mob violence also provided cover for acts of personal vengeance. For example, during the year HAKI reported civilian mobs killed 16 persons in the six coastal counties. Police frequently failed to act to stop mob violence.

Landowners formed groups in some parts of the country to protect their interests from rival groups or thieves. Reports indicated politicians often funded these groups or provided them with weapons, particularly around election periods.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers, including those in export processing zones, to form and join unions of their choice and to bargain collectively. The law prohibits antiunion discrimination and provides for reinstatement of workers dismissed for union activity. The Employment and Labour Relations Court (ELRC) may order reinstatement and damages in the form of back pay for employees wrongfully dismissed for union activities.

Legal restrictions limit worker rights to establish a union, bargain collectively, and conduct legal strikes. For example, the Registrar of Trade Unions may refuse to register a union if a similar union already exists, and union membership is granted only to persons employed in the sector for which the trade union is registered. For a union to be recognized as a bargaining agent, it must represent a simple majority of the employees in a firm eligible to join the union. This provision extends to public- and private-sector employees. Members of the armed forces, prisons service, and police are not allowed to form or join trade unions. The law prescribes conditions of eligibility for union offices and provides government officials with authority to intervene in union election process. The law allows the Registrar of Trade Unions to terminate registration of a trade union, employer's organization, or union federation upon finding evidence of violation of the labor relations act.

The law permits the government to deny workers the right to strike under certain conditions. For example, the government prohibits members of the military, police, prison guards, and the National Youth Service from striking. Civil servants are permitted to strike following a seven-day notice period. A bureau of the Ministry of Labour typically referred disputes to mediation, fact finding, or binding arbitration at the ELRC, a body of up to 21 judges that has exclusive jurisdiction to handle employment and labor matters and that operated in urban areas, including Nairobi, Mombasa, Nyeri, Nakuru, Kisumu, and Kericho. The ELRC also had subregistries in Meru, Bungoma, Eldoret, Malindi, Machakos, and Garissa. Strikes related to employment matters or recognition of trade union rights are protected from referrals to the Industrial Court if conciliation efforts fail. The law limits

strike actions to matters of conditions of employment and recognition of trade union rights. The law prohibits sympathy or solidarity strike actions. The law prescribes heavy punishments for workers who incite others to participate in strike actions deemed illegal.

By law, workers who provide essential services, interpreted as “a service the interruption of which would probably endanger the life of a person or health of the population,” may not strike. Any trade dispute in a service listed as essential or declared an essential service may be adjudicated by the ELRC. The law provides for collective bargaining but places limits on that right. The law protects collective bargaining rights for unions that represent a simple majority of all workers eligible to become union members. Workers reported that some employers used this law to limit labor rights through gerrymandering work units in their company to hinder formation of a simple majority.

The law permits the Salaries and Remuneration Commission to intervene in collective bargaining to determine the fiscal sustainability of union proposals. The law permits workers in collective bargaining disputes to strike if they have exhausted formal conciliation procedures and have given seven days’ notice to the government and the employer. Conciliation is not compulsory in individual employment matters. Security forces may not bargain collectively but have an internal board that reviews salaries. Informal workers may establish associations, or even unions, to negotiate wages and conditions matching the government’s minimum wage guidelines and advocate for better working conditions and representation in the ELRC. The bill of rights in the constitution allows trade unions to undertake their activities without government interference, and the government generally respected this right.

Labor laws apply to all groups of workers. Penalties for labor law violations were not commensurate with those for similar offenses.

The government enforced the decisions of the ELRC inconsistently. Many employers did not comply with reinstatement orders, and some workers accepted payment in lieu of reinstatement. In several cases employers successfully appealed ELRC decisions to the Court of Appeals. The enforcement mechanisms of the ELRC remained weak, and its existing backlog of 1,200 cases raised concerns

regarding the long delays and lack of efficacy of the court.

The ELRC received many cases arising from the government's failure to implement new labor laws. The parties filed most cases directly without referral to the Ministry of Labour for conciliation.

The chief justice designated all county courts presided over by senior resident magistrates and higher-ranking judges as special courts to hear employment and labor cases. Providing adequate facilities outside of Nairobi was difficult, but observers cited the ability of workers to submit labor-related cases throughout the country as a positive step. The 2016 employment and labor relations (procedure) rules provide parties access to file pleadings directly in electronic form, pretrial procedures, and alternative dispute resolution. The rules also set a 30-day time limit for the court to submit a report on disagreements over collective bargaining agreements filed.

The government generally respected freedom of association and the right to bargain collectively, although enforcement was inconsistent. The government expressed its support for union rights mandated in the constitution.

Migrant workers often lacked formal organization and consequently missed the benefits of collective bargaining. Similarly, domestic workers and others who operated in private settings were vulnerable to exclusion from legal protections, although domestic workers' unions existed to protect their interests.

The government had labor attaches in Qatar, Saudi Arabia, and the United Arab Emirates to regulate and coordinate contracts of migrant workers from the country and promote overseas job opportunities. The National Employment Authority managed a website that provided information to prospective migrant workers on the procedures of becoming a migrant worker in Arabian Gulf countries. The Ministry of East African Community and Regional Development also helped domestic workers understand the terms and conditions of their work agreements. The National Employment Authority regulates the conduct of labor agents for local migrant workers, including requiring the posting of a performance-guarantee bond for each worker. Civil society organizations and trade unions, however, criticized the government for not doing enough to protect migrant workers' rights and failing

to repatriate citizens working overseas under what they described as abusive conditions.

The misuse of internships and other forms of transitional employment threatened the survival of trade unions, with employers often not hiring employees after an internship ended. State agencies increasingly outsourced jobs to the private sector, and in the private sector, casual workers were employed on short-term contracts.

This shift contributed to declining membership in trade unions. NGOs and trade unionists reported replacement of permanent positions by casual or contract labor, especially in the export-processing zones, the Port of Mombasa, and in the agricultural and manufacturing sectors. In some cases, employers staffed permanent jobs with rotating contract workers. This practice occurred at the management level as well, where employers hired individuals as management trainees and kept them in these positions for the maximum permitted period of three years. Instead of converting such trainees to permanent staff, employers replaced them with new trainees at the end of three years.

The governmental Teachers Service Commission reportedly contributed to weakening teacher trade unions through its dispute with the Kenya National Union of Teachers regarding alleged commission delays in remitting members' fees to the union, which crippled the capacity of the union to provide member services and reduced union membership. The University Academic Staff Union also expressed frustration with some public universities not implementing the 2017 collective bargaining agreement.

b. Prohibition of Forced or Compulsory Labor

The law prohibits and criminalizes most forms of forced or compulsory labor, including by children. The law allows, in some situations, up to 60 days of compulsory labor per year for the preservation of natural resources. The country made moderate advances to prevent or eliminate forced labor.

The government did not effectively enforce the law, and forced labor occurred, including forced child labor (see section 7.c.). Certain legal provisions, including the penal code and the Public Order Act, impose compulsory prison labor, including for political offenses. Resources, inspections, and remediation were not

adequate to prevent forced labor. Forms of forced labor included debt bondage, exploitation of migrant workers, and compulsion of persons, including family members, to work as domestic servants. Traffickers exploited children through forced labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging (see section 7.c.). Nairobi-based labor recruiters maintained networks in Uganda and Ethiopia that recruited Burundian, Ethiopian, Rwandan, and Ugandan workers through fraudulent offers of employment in Kenya, the Middle East, and Asia. The country continued to serve as a transit point for migrants seeking work in South Africa, leaving these populations vulnerable to exploitation; traffickers exploited transient Ethiopians in forced labor and Burundian and Rwandan women in domestic servitude.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

The law prohibits discrimination based on race, sex, ethnicity, religion, and several other criteria, but it does not explicitly prohibit discrimination based on sexual orientation or gender identity. Several regulatory statutes explicitly prohibit discrimination against persons with disabilities; provide a legal framework for a requirement for the public and private sectors to reserve 5 percent of employment opportunities for persons with disabilities; provide tax relief and incentives for such persons and their organizations; and reserve 30 percent of public-procurement tenders for women, youth, and persons with disabilities.

The government did not effectively enforce the law. Penalties for discrimination were less than those for comparable offenses. Gender-based discrimination in employment and occupation occurred, although the law mandates nondiscrimination based on gender in hiring. The average monthly income of women was approximately two-thirds that of men. Women had difficulty working

in nontraditional fields, received slower promotions, and were more likely to be dismissed. According to a World Bank report, both men and women experienced sexual harassment in job recruitment, but it was more frequently experienced by women. Both men and women who tried to establish their own informal businesses were subjected to discrimination and harassment.

Many county governors continued to appoint and employ disproportionate numbers of the dominant tribe in their county, bypassing minority groups. These problems were aggravated by the devolution of fiscal and administrative responsibility to county governments. Observers also noted patterns of preferential hiring during police recruitment exercises.

In both private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of members of the same group.

The law provides protection for persons with disabilities against employment discrimination, although many employers discriminated against persons with disabilities during hiring processes (see section 6, Persons with Disabilities). Due to societal discrimination, there were very limited employment opportunities for persons with albinism. There are no legal employment protections for LGBTQI+ persons, who remained vulnerable to discrimination in the workplace. Discrimination against migrant workers also occurred.

e. Acceptable Conditions of Work

Wage and Hour Laws: The law provides for a national minimum wage for all sectors of the economy, and the minimum wage for all occupations exceeded the World Bank poverty rate. The law establishes regulation of wages, and the government established basic minimum wages by occupation and location, setting minimum standards for monthly, daily, and hourly work in each category.

The law limits the normal workweek to 52 hours (60 hours for night workers); some categories of workers had lower limits. It specifically excludes agricultural workers from such limitations. It entitles an employee in the nonagricultural sector to one rest day per week and 21 days of combined annual and sick leave. The law also requires total hours worked (regular time plus overtime) in any two-week period not exceed 120 hours (144 hours for night workers) and provides premium

pay for overtime.

The Ministry of Labour is responsible for enforcement of wage and hour laws. The government did not employ enough inspectors to surveil and enforce wage and hour laws. The same inspectors were responsible for occupational safety and health (OSH) enforcement and have the authority to make unannounced inspections and initiate sanctions. The government did not effectively enforce wage and hour laws, and penalties were not commensurate with those for comparable offenses. Authorities reported some workweek and overtime violations, but workers in some enterprises, particularly in the export-processing zones and those in road construction, claimed employers were not penalized for forcing them to work extra hours without overtime pay to meet production targets. Hotel industry workers were usually paid the minimum statutory wage, but employees worked long hours without compensation. Additionally, employers often did not provide required nighttime transport, leaving workers vulnerable to assault, robbery, and sexual harassment.

Occupational Safety and Health: The law details environmental, health, and safety standards. The Ministry of Labour's Directorate of Occupational Health and Safety Services has the authority to inspect factories and work sites but employed an insufficient number of labor inspectors to conduct regular inspections. The same inspectors were responsible for wage and hour enforcement. Fines generally were insufficient to deter violations.

The directorate's health and safety inspectors may issue notices against employers for practices or activities that involve a risk of serious personal injury. Employers may appeal such notices to the Factories Appeals Court, a body of four members, one of whom must be a High Court judge. The law stipulates factories employing 20 or more persons have an internal health and safety committee with representation from workers. According to the government, many of the largest factories had health and safety committees.

Workers, including foreigners and immigrants, have the legal right to remove themselves from situations that endanger health or safety without jeopardy to their employment. The Ministry of Labour did not effectively enforce these regulations, and workers were reluctant to remove themselves from working conditions that

endangered their health or safety due to the risk of losing their jobs. The Kenya Federation of Employers provided training and auditing of workplaces for health and safety practices.

The law provides for labor inspections to prevent labor disputes, accidents, and conflicts and to protect workers from occupational hazards and disease by ensuring compliance with labor laws. The government paid low salaries to labor inspectors and did not provide vehicles, fuel, or other resources, making it very difficult for labor inspectors to do their work effectively and leaving them vulnerable to bribes and other forms of corruption. The State Department for Labour had yet to hire new inspectors after a large number retired in the previous two years.

Wage, Hour, and OSH Enforcement: The Ministry of Labour enforces wage, hour, and occupational health and safety standards. In May, President Kenyatta increased the minimum wage. Formal sector employers complied with the new directive whereas compliance remained a challenge in the informal sector. The Ministry of Labour hired more labor inspectors during the year. This improved the ratio of labor inspectors to workers from one per 183,000 to one per 59,000 and moved the country closer to the International Labor Organization target for industrializing countries. According to the OSH Directorate, formal employers mostly complied with workplace safety measures. Enforcement in the informal sector, however, remained a problem. The law allows labor inspectors to conduct unannounced inspections. In 2020, ODPP assumed the mandate for labor relations violations litigation and penalty assessment with guidance from labor inspectors.

Informal Sector: More than 80 percent of citizens worked in the informal sector, according to World Bank data. The Kenyan National Bureau of Statistics reported in 2020 that informal sector operations cut across all sectors of the economy and sustain a majority of households, with predominant work sectors in order of prevalence including agriculture and livestock, wholesale and retail trade, repair of vehicles and motorcycles, small-scale and home-based manufacturing and production, and accommodation and food service activities.

The law provides social protections for workers employed in the formal and informal sectors. Informal workers organized into associations, cooperatives, and, in some cases, unions. Informal workers worked long hours, with high mean

weekly working hours of 60 hours. Although informal-sector and part-time workers are covered by wage and hour laws and occupational safety and health law, the government did not inspect or enforce violations in the informal sector. Local authorities often harassed home-based and microenterprises, which often operated without licenses due to a lack of business premises. Workers in these enterprises were unable or unlikely to receive help from local authorities to enforce workplace protections and were inhibited from making complaints due to fear of losing their sole livelihood.

The constitution provides that everyone has a right to social security, and the government has a progressive social protection policy for income security, social health protection, and shock responsive social protection. Most informal workers, however, were unable to contribute to, and therefore benefit from, the schemes because they were self-employed or their employers did not contribute.